

FILED 5-7-01

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MAY - 7 2001

SHERMAN DIVISION

DAVID J. MALAND, CLERK
BY DEPUTY 

LONZO GOVAN, #774832

§

VS.

§

CIVIL ACTION NO. 4:00cv424

DIRECTOR, TDCJ-ID

§

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Petitioner Lonzo Govan, an inmate confined in the Texas prison system, proceeding *pro se*, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was referred for findings of fact, conclusions of law and recommendations for the disposition of the case.

On January 8, 2001, an order was issued ordering the Petitioner to submit either the \$5 filing fee or an application to proceed *in forma pauperis*, together with an *in forma pauperis* data sheet, within thirty days from the receipt of the order. He was warned that failure to comply with the order may result in the dismissal of the lawsuit. The Court received an acknowledgment from the Petitioner indicating that he received the order on January 17, 2001. To date, the Petitioner has not paid the filing fee nor has he submitted an application to proceed *in forma pauperis*. He has failed to prosecute this case.

The exercise of the power to dismiss for failure to prosecute is committed to the sound discretion of the Court and appellate review is confined solely to whether the Court's discretion

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was abused. *Green v. Forney Engineering Co.*, 589 F.2d 243 (5th Cir. 1979); *Lopez v. Aransas County Independent School District*, 570 F.2d 541 (5th Cir. 1978). Not only may a district court dismiss for want of prosecution upon motion of a defendant, but it may also, *sua sponte*, dismiss an action whenever necessary to achieve the orderly and expeditious disposition of cases. *Anthony v. Marion County General Hospital*, 617 F.2d 1164 (5th Cir. 1980). The present case should be dismissed.

Recommendation

It is therefore recommended that the complaint should be dismissed without prejudice pursuant to Rule 41, Local Rules for the Eastern District of Texas.

Within ten (10) days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations contained in the report.

A party's failure to file written objections to the findings, conclusions and recommendations contained in this Report within ten days after being served with a copy shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United States Auto Ass'n.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

SIGNED this 5th day of April, 2001.


ROBERT FAULKNER
UNITED STATES MAGISTRATE JUDGE